(2012) 03 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition (T) No.5289 of 2011

M/s. Saumya Mining Ltd APPELLANT

Vs

The State of Jharkhand and Ors RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Central Sales Tax (Registration and Turnover) Rules, 1957 — Rule 5(1)

Citation : (2012) 3 JCR 121 : (2012) 53 VST 350

Hon'ble Judges : Prakash Tatia, J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : M.S. Mittal and Mr. N.K. Pasari, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.The petitioner is a registered dealer under the provisions of the Central Sales Tax Act and has been given a registration certificate in Form-''B'' under Rule 5(1) of the Central Sales Tax (Registration & Turnover) Rules 1957. The petitioner has been registered in the business of Civil and Mining work contract. In registration certificate the entries are of bricks, sand, cement, rod, hardware, electrical goods, equipments, sanitary ware & machineries. It is specifically mentioned that the petitioner is engaged in the work contract and also in mining work contracts. The petitioner purchased some earth moving machineries from different parts of the country and petitioner demanded ''C Form for those purchase so as to get the benefit of tax.

2. The petitioner''s contention is that since 2005 till 2008 he was regularly given ''C'' Form by the same authority but when he demanded for the purchase of the year 2009 the ''C'' Form was declined by order dated 7th March, 2010. The assessing officer after taking note of the fact that the petitioner was purchasing similar machineries in previous years was given ''C Form but this time opined that the petitioner is demanding ''C'' Form for earth moving equipments whereas in his certificate of Registration earth moving equipments has not been entered.

3. The petitioner preferred revision petition against the order dated 17th March, 2010 which was dismissed by the Revisional Authority vide order dated 7th July, 2011 and it has been held that petitioner has not purchased the above machineries for resale or his transaction is falling in the deemed sales. The petitioner is aggrieved against both the orders.

4. The only short question involved in this writ petition is that whether the petitioner''s purchase of the earth moving equipments falls in entry No. 25 of schedule II of Jharkhand Valued Added Tax Act, 2005? It is not in dispute that the commodity in question is in fact earth moving equipments/ machineries. It is also not in dispute that words "earth moving equipments or machineries" as such, have not been entered in the certificate of registration of the petitioner. In the certificate of registration the words used are "machineries and equipments''*. The petitioner in his application form for getting the registration disclosed that he is engaged in the business of mining and further disclosed that he is raising and removing overburden and incidental ore obviously, in mines. The petitioner in application for obtaining registration specifically mentioned that the petitioner is engaged in the mining operation. The relevant entry for our consideration is entry No. 25, Schedule-ll of the Jharkhand Value Added Tax Act, 2005. This entry says as under:-

25. Capital Goods or Plants and machineries such as all types of Plants, machineries, equipments, apparatus, tools, engineering goods, appliances their components, spare parts accessories, pollution/quality control equipments; instrumental-B Oc incubator, Coc apparatus, ion analyzer; Air pollution control equipment-filters (fabric filters, bag filters, vaccum filters), electrostatic precipitators, cyclones, wel scrubbers, particle analyzer (SO2 CO, Nox, hydrocarbons, chlorine, fluorine, etc), personal samplers, detectors (for grass), high volume sampler, pressure gauges, fitter head assembly, pitet tube, sampling train (for ambient/stack air quality monitoring), smoke meter, mist eliminator, earth moving machineries such as Excavator. Hydraulic Excavators colampshell. Droiline. rock breakers. Mini-Excavators. Crawler. Cranes. Wheeled Cranes Wheel-loaders. Front end loaders. Shovels. Breakhoc & Articulated Cranes and all other similar implements and machineries in this category:their spare parts, accessories and components thereof or such other capital goods or plant and machineries as may be specified in this behalf from to me]

It is clear from the language used in entry No. 25 that it included the items by items working nature and wherever it was found essential or to make intention clear some examples are given after using words "such as". Therefore, after the words the "Capital Goods or Plants and machineries" words have been used "such as" all types of Plants, machineries, equipments, apparatus, tools, engineering goods, appliances their components, spare parts accessories, pollution/quality control equipments; instrumental-B Oc incubator, Coc apparatus, ion analyzer; Air pollution control equipment-filters (fabric filters, bag filters, vaccum filters), electrostatic precipitators, cyclones, wel scrubbers, particle analyzer (SO2 CO, Nox, hydrocarbons, chlorine, fluorine, etc), personal samplers, detectors (for grass), high volume, sampler, pressure gauges, fitter head assembly, pitet tube, sampling train (for ambient/stack air quality monitoring), smoke meter, mist eliminator.

5. In entry No. 25 all earth moving machineries have been included and to make it clear that, some of machineries have been named by their nature and way of working and thereafter words have been used "and all other similar implements and machineries in this category", which is clear from the language earth moving machineries such as Excavator, Hydraulic Excavators colampshell, Droiline, rock breakers, Mini-Excavators, Crawler, Cranes, Wheeled Cranes Wheel-loaders, Front end loaders, Shovels, Breakhoc & Articulated Cranes and all other similar implements and machineries in this category; their spare parts, accessories and components thereof or such other capital goods or plant and machineries as may be specified in this behalf from to me." Relevant entry for our purposes is "earth moving machineries." In this entry 25, there is reference of earth moving machineries thereafter, if machinery is earth moving machinery by its nature and classification it is falling in this category and the words used in petitioner''s certificate "machinery" if the purchase is of earth moving equipment then it falls in this category. It also has been clarified by using of words "such as" and thereafter there is mention of certain machineries which appears to be described by their nature. After giving some examples it has been widened by use of the words "and all other similar implements and machineries in this category." Therefore, it is clear from the entry 25 that what was required under category 25 was the nature of machineries and with reference to the earth moving machineries the nature was found to be important and therefore, the words have been used "and all other similar implements and machineries in this category." This language also suggest that in case the machinery is found to be of similar nature, obviously, which is used in earth moving purpose then that fact can be proved by evidence and if the revenue is satisfied that the machinery is earth moving machinery then revenue may decide accordingly.

6. If we hold it that only those machineries which have been specifically mentioned after the words "earth moving machineries" are the only machineries in this entry No. 25 of nature of "earth moving machinery" then we will be ignoring the specific language in the category itself widening the scope of determination of nature of machineries.

7. As we have already noticed that petitioner is engaged in a mining operation and got the "machineries" included in his registration certificate which was issued by the respondent themselves and in application he has disclosed that he is engaged in the mining business and particularly in the business of removing overburden obviously of the mine and specifically uranium mine. Therefore, the petitioner''s machineries/equipments purchased for the purpose of earth moving, certainly falls in the entry No. 25, Schedule-ll of the Jharkhand Value Added Tax Act, 2005.In view of the above reasons, the writ petition of the petitioner is

allowed and the respondents are directed to issue C-Form to the petitioner immediately. In consequence thereof the notice of initiation of penalty proceedings is also quashed.

